

WESTERN AUSTRALIA

**BUILDERS' REGISTRATION
ACT 1939**

ARRANGEMENT

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WESTERN AUSTRALIA

BUILDERS' REGISTRATION ACT 1939

AN ACT relating to the qualifications and registration of builders; to constitute a board in relation thereto; to establish a committee with jurisdiction in respect of certain building disputes, and for other purposes connected therewith.

[Long title amended by No. 60 of 1991 s.4.]

Short title and commencement

1. This Act may be cited as the *Builders' Registration Act 1939*, and shall come into operation on a day to be fixed by proclamation.¹

Interpretation

2. In this Act, unless inconsistent with the context of subject matter: —

“Board” means the Builders' Registration Board of Western Australia constituted under this Act.

“Builder” means a person trading as a builder.

“Building” means any building of a permanent nature used or intended to be used for residential, professional, manufacturing, trading, commercial, hospital, institutional, assemblage, or public purposes, but does not include a farm building, and the term used as an abstract noun means the erection or structural alteration of any such building.

“Building licence” means a building licence issued under Part XV of the *Local Government Act 1960*.

“Company” means a company, a recognized company or a recognized foreign company within the meaning of the *Companies (Western Australia) Code*² or a foreign company which is registered under Division 5 of Part XIII of that Code.

“Disputes Committee” means the Building Disputes Committee established by section 26.

“Farm building” means any building of a permanent nature, other than a building used or intended to be used for residential purposes, that is —

- (a) constructed or to be constructed, on land used primarily for agricultural purposes; and
- (b) itself used or intended to be used for agricultural purposes.

“Local authority” means a council as defined in section 6 of the *Local Government Act 1960*.

“Person trading as a builder” means any person who, or any partnership or any company or other body corporate that, is engaged in constructing, altering, repairing, adding to or improving the walls and structural parts of buildings for a fixed sum, percentage, or valuable consideration, or reward other than wages.

“Minister” means the Minister for the time being charged with the administration of this Act.

“Register” means the register of builders under this Act.

“Registrar” means registrar appointed under this Act.

“Supervisor” means a person, not being a builder, who oversees the execution or performance of building work, but does not include a foreman, leading hand or other person employed in a like or less responsible capacity in the building industry.

[Section 2 amended by No. 43 of 1940 s.2; No. 54 of 1961 s.3; No. 29 of 1966 s.3; No. 41 of 1968 s.3; No. 91 of 1979 s.3; No. 10 of 1982 s.28; No. 60 of 1991 s.5.]

Area within which this Act applies

3. (1) Sections 4 to 24 apply within any area described in the Schedule.

(1a) Notwithstanding subsection (1), sections 12A³ and 12B apply throughout the State to building work that is home building work as defined in the *Home Building Contracts Act 1991*.

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(2) The Governor may make regulations amending the Schedule or deleting the Schedule and substituting a new Schedule.

(3) Regulations made under subsection (2) may provide that this Act, as amended by those regulations, may be cited in the manner specified in those regulations.

(4) Notwithstanding any increase in the area to which this Act applies effected by regulations made under subsection (2), any act or thing lawfully commenced, and not discontinued or abandoned, before the coming into operation of those regulations in an area to which this Act did not apply before that coming into operation but to which this Act applies after that coming into operation may be continued and completed as if those regulations had not come into operation.

(5) Notwithstanding the repeal of the Second Schedule to the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*, by the *Metropolitan Water Supply, Sewerage, and Drainage Act Amendment Act 1967* (in this subsection called "**the amending Act**") and the provisions of this section as those provisions existed during the period commencing with the coming into operation of the amending Act and ending immediately before the coming into operation of the *Builders' Registration Act Amendment Act (No. 3) 1979*¹ —

- (a) the area within the boundaries (as from time to time defined, altered or extended during that period) of the Metropolitan Water, Sewerage, and Drainage Area constituted by the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*, shall be deemed for all purposes of this Act to have been the area within which this Act applied during that period; and
- (b) any act or thing done during that period in the area within the boundaries referred to in paragraph (a) in purported exercise of any power conferred by this Act shall not be deemed to be invalid by reason only of that repeal and those provisions.

(6) Notwithstanding the coming into operation of the *Builders' Registration Act Amendment Act (No. 3) 1979*¹, any act or thing lawfully commenced, and not discontinued or abandoned, before that coming into operation in an area to which this Act did not apply before that coming into operation but to which this Act applies after that coming into operation may be continued and completed as if the *Builders' Registration Act Amendment Act (No. 3) 1979*¹, had not come into operation.

[Section 3 inserted by No. 91 of 1979 s.4; amended by No. 39 of 1983 s.3; No. 60 of 1991 s.6 (1).]

**Prohibition against unregistered
builders carrying on business**

4. (1) Subject to this section, a person who is not registered under this Act shall not —

- (A) (a) construct either for himself or any other person, any building for the purpose of the immediate sale thereof;
- (aa) construct for himself any building other than a dwelling house or a building comprising 2 dwellings on ground level, each being complete and self-contained, whether or not the building is so designed as to give an external appearance of a single dwelling;
- (b) enter into any contract or engagement to construct any building, or build any building for another in pursuance of any contract or engagement;
- (c) be entitled to recover in any court any fee or charge under any such contract or engagement;
- (d) hold himself out as trading as a registered builder, or, as the case may be, a journeyman builder,

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unless —

- (i) the total fee or charge payable in respect of the carrying out of the same does not exceed \$6 000 or such other amount as may be prescribed by regulations made under section 24; or
 - (ii) under subsection (2) he is a person exempted from the necessity of obtaining registration;
- (B) assume, take or use (either alone or in combination with any other word, letter or device) the name or title of “registered builder” or, as the case may be, “journeyman builder”, or any name, title or description calculated to lead others to believe he is so registered, or by words or conduct hold himself out as being so registered.

(1aa) A person who contravenes subsection (1) commits an offence and is liable to a penalty of —

- (a) for an offence against subsection (1) (A) (b), \$10 000 and a daily penalty of \$100 for a continuing offence; and
- (b) for an offence against any other provision of the subsection, \$400 for a first offence and a minimum of \$400 and a maximum of \$2 000 for a later offence.

(1a) Notwithstanding anything in subsection (1), the Board may, on the application in writing in the form approved by the Board of a person who is not registered under this Act, authorize in writing that person to construct for himself a building —

- (a) which is specified in that authority; and
- (b) which is not a dwelling house or a building referred to in subsection (1) (A) (aa).

(1b) In subsections (1) and (1a) —

“**construct**” includes add to, alter, improve, renovate and repair.

(2) The persons exempted from the necessity of obtaining registration under this Act as mentioned in subsection (1) (A) (ii) are —

(a) any person who is —

[(i) and (ii) deleted]

(iii) an officer or servant of the Crown or of any Crown instrumentality, or of any local authority, in so far as he directs or supervises the carrying out of any contract or engagement in the performance of his duties as such officer or servant;

[(b) deleted]

(c) any local authority.

(3) The provisions of this section apply notwithstanding that a number of distinct contracts or engagements to perform work or render services are entered into in connection with the same building by the same person, where —

(i) the moneys payable in respect of the performance of the contracts or engagements exceed \$6 000 or such other amount as may be prescribed by regulations made under section 24, in the aggregate but some or all of such contracts or engagements taken severally do not exceed that sum; or

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- (ii) in any case where the Board is satisfied that they are substantially in respect of the one undertaking or that they were entered into with a view to evading the provisions of this Act.

[Section 4 amended by No. 43 of 1940 s.3; No. 24 of 1948 s.3; No. 44 of 1953 s.2; No. 63 of 1956 s.2; No. 61 of 1959 s.3; No. 54 of 1961 s.4; No. 29 of 1966 s.4; No. 97 of 1975 s.3; No. 91 of 1979 s.5; No. 93 of 1990 s.4.]

Local authorities not to issue building permits to unregistered persons

4A. (1) It shall be unlawful for any local authority to issue to any person who is not registered under this Act a building licence to commence or proceed with any building on any block of ground in any area within which this Act applies —

- (a) unless the total fee or charge payable in respect of the carrying out of such building does not exceed \$6 000 or such other amount as may be prescribed by regulations made under section 24; or
- (b) unless the person to whom such building licence is issued is a person exempted under section 4 (2) from the necessity of obtaining registration; or
- (c) unless the person to whom such a building licence is issued is proposing to construct the building to which the building licence relates for himself and not for the purpose of the immediate sale thereof, and —
 - (i) the building to which the building licence relates is a dwelling house or a building comprising 2 dwellings on ground level, each being complete and self-contained, whether or not the building is so designed as to give an external appearance of one dwelling or is a building which that person is authorized under section 4 (1a) to construct; and

- (ii) the person to whom the building licence is issued has furnished the local authority with a statutory declaration verifying the fact that he has not, within the last preceding 6 years, obtained from that or any other local authority the issue of any other building licence pursuant to this paragraph.

(1a) Subject to subsection (4), the Minister may order that, in relation to any particular application by a person for a building licence, subparagraph (ii) of subsection (1) (c) shall have effect as if instead of the period of 6 years referred to therein the subparagraph contained a reference to a lesser number of years specified in the order by the Minister.

(1b) It shall be unlawful for any local authority to issue to any person who is a journeyman builder under section 10A a building licence to commence or proceed with any building on any block of ground in any area within which this Act applies, if the cost of the work including the cost of supplying the necessary materials and rendering the necessary services is reasonably likely when the work is commenced to exceed \$30 000 whether that person contracts or engages to execute the work under one or more than one contract, unless subsection (1) (c) applies to that person.

(2) A person who for the purposes of obtaining or attempting to obtain a building licence from a local authority makes a representation or statement that is false in a material particular in relation to —

- (a) the value of a building to be erected under the building licence;
- (b) the fee or charge payable in respect of the carrying out of the building work;
- (c) any qualifications held under this Act; or
- (d) any exemption from the provisions of this Act,

commits an offence.

Penalty: \$10 000.

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(2a) A person who is constructing a building pursuant to a building licence issued to him in accordance with subsection (1) (c) shall affix or erect on the site of the building a sign of reasonable dimensions showing in easily legible letters and figures —

- (a) his name; and
- (b) the number of the building licence.

Penalty: \$100.

(3) Without affecting the provisions of section 4, a person who —

- (a) is not registered as a builder under this Act; and
- (b) has constructed a building pursuant to a building licence lawfully issued to him under subsection (1) (c),

shall not without having first obtained the consent in writing of the Minister under subsection (4), sell or otherwise dispose, within 3 years of the date of issue to him of the building licence, of the land on which the building was constructed.

Penalty: \$10 000.

(4) An application for an order under subsection (1a) or a consent under subsection (3) shall be made in writing to the Minister, and before he makes an order or gives a consent the Minister shall be satisfied that —

- (a) the application arises from a change in the circumstances of the applicant and not from an attempt on the part of the applicant to defeat the purposes of this section; and
- (b) the applicant would suffer hardship if the application were refused.

(5) The Minister may by writing signed by him delegate to the Commissioner for Consumer Affairs appointed under section 15 of the *Consumer Affairs Act 1971* the functions conferred on the Minister by subsections (1a), (3) and (4).

[Section 4A inserted by No. 24 of 1948 s.4; amended by No. 44 of 1953 s.3; No. 63 of 1956 s.3; No. 54 of 1961 s.5; No. 29 of 1966 s.5; No. 41 of 1968 s.4; No. 97 of 1975 s.4; No. 91 of 1979 s.6; No. 39 of 1983 s.4; No. 8 of 1986 s.4; No. 93 of 1990 s.5.]

Constitution of Builders' Registration Board of Western Australia

5. (1) A body corporate is hereby constituted under the name of the Builders' Registration Board of Western Australia.

(2) The Board shall have perpetual succession and a common seal, and shall be capable of suing and being sued.

[Section 5 amended by No. 15 of 1944 s.2; No. 44 of 1953 s.4; No. 61 of 1959 s.4; No. 54 of 1961 s.6; No. 41 of 1968 s.5; No. 39 of 1983 s.5.]

Appointment of Board members

5A. (1) The Board shall consist of a chairperson and 6 other members, appointed by the Governor in accordance with this section.

(2) The chairperson shall be a person who is a practitioner as defined by the *Legal Practitioners Act 1893* and who is nominated as chairperson by the Minister.

(3) As to the other 6 members —

(a) one shall be a person nominated by the Minister whom the Minister considers to be qualified to represent the interests of consumers;

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- (aa) one shall be a person nominated by the Minister whom the Minister considers to be qualified to represent the interests of registered builders trading in an area within which this Act applies, other than the metropolitan area as described in item 1 of the Schedule; and
- (b) 4 shall be persons nominated by the Minister, one such nomination being from each of the respective panels of names submitted by the following —
 - (i) The Royal Australian Institute of Architects (W.A. Chapter);
 - (ii) the Master Builders' Association of Western Australia, the panel submitted by which shall comprise only persons registered under this Act;
 - (iii) The Building Trades Association of Unions of Western Australia (Association of Workers); and
 - (iv) the Housing Industry Association Western Australian Division.

(4) Whenever it is necessary for the purpose of a nomination under subsection (3) (b) or section 5B (2) or 5C (3), the Minister shall request a body referred to in subsection (3) (b) to submit a panel of 3 names to him for that purpose within a time specified by the Minister; and if the body fails to do so within the time so specified the Minister may nominate —

- (a) in the case of a failure to do so by the Master Builders' Association of Western Australia, a person registered under this Act; and
- (b) in any other case, such person as he thinks fit,

for the purposes of this section or of section 5B (2) or 5C (3) as the case may be.

(5) Subject to section 5B, a member of the Board shall hold office for such term, not exceeding 3 years, as is specified in his instrument of appointment, but may from time to time be re-appointed.

[Section 5A inserted by No. 39 of 1983 s.6; amended by No. 8 of 1986 s.5; No. 60 of 1991 ss.7 and 8.]

Further provisions as to chairperson

5AA. (1) The appointment of the chairperson may be made either on a full-time or a part-time basis.

(2) Where, immediately before being appointed on a full-time basis as the chairperson, a person occupied an office under the *Public Service Act 1978*, that person shall —

- (a) continue to retain existing and accruing rights, including rights under the *Superannuation and Family Benefits Act 1938* and the *Government Employees Superannuation Act 1987*, as if the person's service as chairperson were service as an officer under the *Public Service Act 1978*; and
- (b) if the person resigns from the office of chairperson or that office ceases to exist or ceases to be held on a full-time basis, be entitled, if the person has not attained the age of 65 years, to be appointed to an office under the *Public Service Act 1978* not lower in status than the office that the person occupied immediately before being appointed as the chairperson.

[Section 5AA inserted by No. 60 of 1991 s.9.]

Vacancies

5B. (1) The office of a member of the Board shall become vacant if the member —

- (a) dies;

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- (b) resigns his office by writing under his hand addressed to the Minister;
- (c) becomes an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (d) is convicted of an indictable offence;
- (e) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*; or
- (f) is absent without leave of the Board from 6 consecutive meetings of the Board,

and the Governor may thereupon, in accordance with subsection (2), appoint a person to be a member of the Board in place of the member whose office has become vacant, and any person so appointed shall hold office for the unexpired part of the term of office of that lastmentioned member.

(2) An appointment under subsection (1) shall be made on the nomination of the Minister and, subject to subsection (4) of section 5A, the nominee shall, except in the case of a vacancy in the office of chairperson or of the members referred to in subsection (3) (a) and (aa) of that section, be selected from a panel submitted to the Minister, in accordance with subsection (3) (b) of that section, by the body from whose panel the member whose office has become vacant was selected.

(3) A person may only be appointed as chairperson under this section if he is a practitioner as defined by the *Legal Practitioners Act 1893*.

[Section 5B inserted by No. 41 of 1968 s.6 as s.5A; renumbered as 5B and amended by No. 39 of 1983 s.7; No. 8 of 1986 s.6; No. 24 of 1990 s.123; No. 60 of 1991 ss.7 and 10.]

Deputy of chairperson and members

5C. (1) The Governor shall appoint a member to be deputy chairperson of the Board, and during any vacancy in the office of chairperson, or if he is unable to act by reason of sickness, absence or other cause, the deputy chairperson shall have and perform the powers, functions and duties of the chairperson.

(1a) The deputy chairperson of the Board —

- (a) need not be a practitioner as defined by the *Legal Practitioners Act 1893*; and
- (b) notwithstanding subsection (1), does not have the powers, functions and duties of the chairperson under section 27.

(2) The Governor may, in accordance with subsection (3), appoint a deputy for each member of the Board (other than the chairperson) and such a deputy is entitled, in the event of the absence from a meeting of the Board of the member for whom he is deputy, to attend that meeting, and, when so attending, shall be deemed to be a member of the Board.

(3) An appointment under subsection (2) shall be made on the nomination of the Minister, and, subject to subsection (4) of section 5A, the nominee shall, except in the case of the members referred to in subsection (3) (a) and (aa) of that section, be selected from a panel submitted to the Minister, in accordance with subsection (3) (b) of that section, by the body from whose panel was selected the member for whom the nominee is to be deputy.

[Section 5C inserted by No. 39 of 1983 s.8; amended by No. 8 of 1986 s.7; No. 60 of 1991 ss.7 and 11.]

Board proceedings

6. (1) No act or proceeding of the Board shall be invalidated in consequence only of there being any vacancy in the number of members of the Board, or by reason of any defect in the appointment of any person who has acted as a member.

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(2) At any meeting of the Board the chairperson, or, in his absence, the deputy chairperson or, in the absence of both of them, any member elected to act as chairperson of such meeting by the members present, shall preside, and in case of an equality of votes, shall have a second or casting vote.

(3) Four members of the Board shall be a quorum for the conduct of the business of the Board, and a quorum of the Board may lawfully exercise the powers vested in the Board, notwithstanding any vacancy or vacancies in its membership.

(4) A member of the Board shall be paid, out of the funds of the Board, such remuneration and travelling and other allowances as are determined in his case by the Minister on the recommendation of the Public Service Commissioner⁴.

(5) The Board shall hold its first meeting on such day and such time and place as the Minister appoints, and on such day the Board shall be deemed and taken to be duly constituted.

[Section 6 amended by No. 44 of 1953 s.5; No. 63 of 1956 s.4; No. 61 of 1959 s.5; No. 33 of 1965 s.2; No. 39 of 1983 s.9; No. 8 of 1986 s.8; No. 60 of 1991 s.7.]

Appointment of officers

7. (1) The Board may appoint a registrar and such clerks and other employees as are necessary for the carrying out of the duties and functions of the Board and the Disputes Committee, and may pay to any person so appointed such salary or remuneration as the Board thinks fit.

(2) The registrar shall be charged with the custody of the register.

[Section 7 amended by No. 60 of 1991 s.12.]

Duties and powers of Board

8. (1) The functions of the Board shall be —
- (a) to determine the course of training (including practical experience in the work of a builder) and the examination mentioned in section 10 (1) (b) (iv) (I);
 - (b) to compile and keep a register containing the names, addresses, qualifications, and other prescribed particulars of persons who are admitted to the register pursuant to this Act, and to publish a copy of the same, and of any supplementary list pursuant to this Act;
 - (c) to issue or cancel certificates of registration;
 - (d) to cancel or suspend the registration of any person under this Act;
 - (e) to annul such cancellation or suspension;
 - (f) to take proceedings for offences against this Act; and
 - (g) generally, to carry out the provisions of this Act.

(2) The Board shall have such powers as are reasonably necessary or expedient for the purpose of enabling it to carry out its functions, and in particular may for that purpose —

- (a) acquire, improve, and dispose of real and personal property; and
- (b) borrow money and charge all or any part of its property as security therefor.

[Section 8 amended by No. 44 of 1953, s.6; No. 39 of 1983, s.10.]

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Indemnity against liability

8A. No liability attaches to the Board or a member or employee of the Board for any act done in good faith in the performance or purported performance of the respective functions of the Board, member or employee under this Act.

[Section 8A inserted by No. 93 of 1990 s.6.]

Register of builders

9. (1) The Board shall keep in the prescribed form a register of persons registered under sections 9A, 10 and 10A to be known as the register of builders.

(2) The Board shall include in each registration made under section 9A or 10 the qualification for registration of the person being registered.

(3) The Board shall cause the register to be progressively amended in accordance with any list of amendments to the register approved by the Board at a meeting of the Board.

(4) A revised register incorporating all amendments to 30 June last shall be prepared and brought into use by the Board by 1 August each year.

(5) The register is to be open for inspection by any person without fee during the ordinary hours of business of the Board.

(6) A person may, on payment of the prescribed fee, if any, obtain from the registrar —

- (a) a list of the names and addresses of all persons registered in the register;
- (b) a certificate as to the registration or non-registration of a named person on a specified date or during a specified period.

(7) A certificate purporting to be signed by the registrar certifying that a person was or was not registered under this Act on a specified date or during a specified period is admissible in any proceedings as evidence of the matters stated in the certificate.

[Section 9 inserted by No. 93 of 1990 s.7.]

Registration of architects and engineers without necessity of completing course or passing examinations

9A. (1) A person who is —

- (a) a member of The Royal Australian Institute of Architects (W.A. Chapter);
- (b) registered under the *Architects Act 1921*;
- (c) a member of The Institution of Engineers, Australia Western Australian Division; or
- (d) a member of The Australasian Institute of Mining and Metallurgy,

and who applies to be registered under the Act shall, subject to subsection (2), be entitled to be so registered if and when —

- (e) he pays the prescribed fee for such registration; and
- (f) he satisfies the Board that he has had 5 years' experience in supervising building construction or in assisting in the supervision of building construction.

(2) Notwithstanding subsection (1), the Board may require an applicant under that subsection to satisfy it that he has sufficient material and financial resources available to enable

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him to meet his financial obligations as and when they become due, and may refuse to register an applicant who fails to so satisfy it.

[Section 9A inserted by No. 61 of 1959 s.6; amended by No. 54 of 1961 s.8; No. 97 of 1975 s.5; No. 39 of 1983 s.11; No. 14 of 1984 s.3.]

Who may be registered

10. (1) Any person, not being a company or any other body corporate, who applies to be registered under this section as a registered builder shall, subject to subsection (2a), be entitled to be so registered if and when —

- (a) he has paid the prescribed fees for such registration; and
- (b) he has satisfied the Board that he —
 - (i) has attained the age of 21 years; and
 - [(ii) deleted]*
 - (iii) is a person of good character; and
 - (iv) (I) has completed the prescribed course of training, including practical experience for a period of at least 7 years, or for periods aggregating at least 7 years, in the work of a builder, or as a supervisor of building work, and has passed the examination prescribed for applicants for registration as registered builders;
 - (II) although not having complied with the requirements of item (I) has nevertheless had such experience in the work of a builder elsewhere than in the State, as to render him in the opinion of the Board, arrived at in such manner as the Board thinks fit, competent to carry out building;

- (III) although not having complied with the requirements of item (I) or item (II) has nevertheless had such experience in the work of a builder within the State, but outside the area to which this Act applied at the time he gained such experience, as to render him in the opinion of the Board, arrived at in such manner as the Board thinks fit, competent to carry out building;
- (IV) although not having complied with the requirements of item (I), (II) or (III) has nevertheless had at least 5 years' practical experience in the work of building construction and has obtained corporate membership of the Australian Institute of Building; or
- (V) although not having complied with the requirements of item (I), (II), (III) or (IV) has nevertheless had 5 years' experience in the work of building construction as a manager or supervisor and satisfies the Board that he is fit and competent to carry out building work,

but for the purpose of this subsection —

- (c) a person who relies in his application on the provisions of paragraph (b) (iv) (II) shall not be entitled to be so registered unless he satisfies the Board that he was not, on the date of the coming into operation of the *Builders' Registration Act Amendment Act 1961*¹, a resident of the State; and

[(d) *deleted*]

(2) Any partnership or any company or other body corporate which applies to be registered under this Act shall, subject as hereafter provided, be entitled to be so registered if and when —

- (a) it has paid the prescribed fees for such registration; and

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- (b) it has satisfied the Board that —
- (i) it is duly authorized to engage in the business of trading as a builder; and
 - (ii) there is already registered under this Act at least one partner of the partnership or at least one director of the company or at least one member of the board of management of the body corporate, or a person employed in such a manner and with such duties and responsibilities by the partnership or the company or the body corporate to manage and supervise the building work undertaken by the partnership or the company or the body corporate as in the opinion of the Board will ensure the proper management and supervision of the building work.

(2a) Notwithstanding subsection (1) or (2), the Board may require an applicant under that subsection to satisfy it that the applicant has sufficient material and financial resources available to enable the applicant to meet his or its financial obligations as and when they become due, and may refuse to register an applicant who fails to so satisfy it.

(3) Notwithstanding anything to the contrary contained in this Act, the registration under this Act of a partnership or a company or other body corporate pursuant to subsection (2) shall continue and have effect only while at least one partner of the partnership or at least one director of the company or at least one member of the board of management of the body corporate, or a person employed as provided by subsection (2) by the partnership or the company or the body corporate aforesaid to manage and supervise the building work undertaken by it continues to be registered under this Act.

(3a) Notwithstanding item (III) of subsection (1) (b), the Board may attach such prescribed conditions as it thinks fit to the registration of a person who is qualified for registration under that item.

(4) Every registered builder shall affix or erect on all works under his control a sign of reasonable dimensions showing in easily legible letters and figures his name and registered number.

Penalty: \$250.

[Section 10 inserted by No. 43 of 1940 s.4; amended by No. 14 of 1945 s.2; No. 24 of 1948 s.5; No. 44 of 1953 s.7; No. 63 of 1956 s.5; No. 54 of 1961 s.9; No. 29 of 1966 s.6; No. 41 of 1968 s.7; No. 97 of 1975 s.6; No. 91 of 1979 s.7; No. 14 of 1984 s.4; No. 8 of 1986 s.9; No. 93 of 1990 s.8.]

Conditional registration

10A. (1) On and after the coming into operation of the *Builders' Registration Act Amendment Act 1961*¹, no person shall be registered or continue to be registered as a registered builder — class B under the provisions of this section as enacted prior to the coming into operation of that Act.

(2) Every person who immediately prior to the coming into operation of the *Builders' Registration Act Amendment Act 1961*¹, was registered as a registered builder — class B under the provisions of this section as enacted prior to the coming into operation of that Act shall be and be deemed to be a journeyman builder, and unless he becomes registered as a registered builder under section 10, shall continue to be a journeyman builder under this section so long as in each year, the first of which shall commence on 1 January 1962, he —

- (a) pays the annual registration fee prescribed by section 22 (3); and
- (b) complies with the requirements of this Act in general so far as they relate to journeyman builders, and of subsections (3) and (4) in particular.

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(2a) Any person who at the time of the coming into operation of the *Builders' Registration Act Amendment Act 1961*¹, has under the provisions of this section as enacted prior to the coming into operation of that Act —

- (a) passed the examination prescribed for applicants for registration as builders — class B, but is not registered under those provisions as a builder — class B; or
- (b) taken in the month of November 1961, the examination prescribed for applicants for registration as builders — class B but the results of such examination are not yet known,

shall, if and when that person has completed the course of training prescribed for applicants for registration as builders — class B under those provisions, be and be deemed to be a person to whom the provisions of subsection (2) apply, subject however in the case of a person referred to in paragraph (b), to his passing the examination therein mentioned or any supplementary examinations granted in respect of that examination.

(3) The conditions of registration under this section are that the person registered —

- (a) shall not, unless he does so for himself and not for the purpose of the immediate sale of the building, execute, or contract or engage to execute, in the area to which this Act applies the erection, construction, alteration, repair, addition to, or improvement of, a building if the cost of executing the work, including the cost of supplying the necessary materials and rendering the necessary services, is reasonably likely when the work is commenced to exceed \$30 000, whether he contracts or engages to execute the work under one or more than one contract or engagement; and
- (b) shall comply with the requirements of notices served upon him under subsection (4).

(4) (a) By notice in writing served upon a person registered under this section, the Board may, from time to time, require him to supply to the Board within 7 days of the service of the notice upon him or such longer time as the Board specifies in the notice or allows, such particulars, relating to a contract or engagement entered into, or to work executed or being executed, by him in connection with a building in the area to which this Act applies, as the Board specifies in the notice.

(b) By the same or a subsequent notice the Board may require the person registered under this subsection to verify by statutory declaration all or any of the particulars he is required to supply under this subsection.

(c) A person who, having been required under this subsection to make a statutory declaration, makes in the declaration a statement which in any material particular is to his knowledge, false, commits an offence.

Penalty: \$400 or 12 months' imprisonment.

[Section 10A inserted by No. 44 of 1953 s.8; amended by No. 63 of 1956 s.6; No. 61 of 1959 s.7; No. 54 of 1961 s.10; No. 29 of 1966 s.7; No. 97 of 1975 s.7.]

Building work by partnership to be under management and supervision of registered builder

10B. Where any building work is carried out by a partnership, the partners therein shall cause —

- (a) the building work to be managed and supervised by one of the partners who is registered under this Act or by an employee of the partners who is so registered; and

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- (b) the name and registered number of that partner or employee to appear —
 - (i) in all advertisements, if any, published by or on behalf of the partnership in respect of the building work; and
 - (ii) in any sign affixed or erected on the building work pursuant to section 10 (4) or otherwise.

Penalty: \$250.

[Section 10B inserted by No. 61 of 1959 s.8; amended by No. 54 of 1961 s.11; No. 29 of 1966 s.8; No. 41 of 1968 s.8; No. 97 of 1975 s.8; No. 91 of 1979 s.8; No 93 of 1990 s.9.]

Details of person supervising and managing building work constructed by company to be supplied in advertisements and signs on building site

10C. Where any building work is carried out by a company or body corporate, the company or body corporate shall cause the building work to be managed and supervised by a director of the company or member of the board of management of the body corporate, as the case may be, who is registered under this Act or by an employee who is so registered and the company or body corporate shall cause the name and registered number of that person to appear —

- (a) in all advertisements, if any, published by or on behalf of the company or body corporate in respect of the building work; and

- (b) in any sign affixed or erected on the building work pursuant to section 10 (4) or otherwise.

Penalty: \$250.

[Section 10C inserted by No. 61 of 1959 s.8; amended by No. 54 of 1961 s.12; No. 29 of 1966 s.9; No. 41 of 1968 s.9; No. 97 of 1975 s.9; No. 91 of 1979 s.9; No. 93 of 1990 s.10.]

Standard of management and supervision

10CA. The requirement for the management and supervision of any building work prescribed by section 10B and section 10C shall not have been complied with unless it can be shown that the management and supervision was sufficient to ensure that the whole of the building work was carried out in a proficient and workmanlike manner.

[Section 10CA inserted by No. 97 of 1975 s.10.]

Sections 10B and 10C not to derogate from other provisions of this Act

10D. The penalties imposed by the provisions of sections 10B and 10C are in addition to and not in derogation of any penalty, suspension or cancellation of registration imposed by any other provisions of this Act.

[Section 10D inserted by No. 61 of 1959 s.8.]

[11. Repealed by No. 14 of 1984 s.5.]

s. 12

**Course of training and examinations
to be prescribed by the Board**

12.⁵ (1) The course of training including practical experience in the work of a builder and the examination mentioned in section 10 (1) (b) (iv) (I) shall be prescribed by the Board, who shall conduct or supervise the conduct of such examinations at such times and places as the Board may appoint.

(2) All costs and expenses connected with or incidental to the conduct of such examinations shall be paid by the Board.

[Section 12 amended by No. 44 of 1953 s.10.]

Order to remedy unsatisfactory building work

12A. (1) Where on complaint being made to it by any person, including the Board, the Disputes Committee is satisfied that any building work has not been carried out in a proper and workmanlike manner by reason that the building work is faulty or unsatisfactory the Disputes Committee may by order in writing served on the person who carried out the building work order him to —

- (a) remedy the faulty or unsatisfactory building work within such reasonable time as is specified in the order; or
- (b) pay to the owner of the building such costs of remedying the building work that is faulty or unsatisfactory as the Disputes Committee considers reasonable in which case any costs so ordered by the Disputes Committee constitute a debt to the owner and are recoverable by him in a court of competent jurisdiction.

(1a) Where, on complaint being made to it by a person for whom building work has been carried out, the Disputes Committee is satisfied that in some respect (other than its being faulty or unsatisfactory) the building work has not been carried

out in a proper and workmanlike manner the Disputes Committee may, having regard to the extent of the failure to carry out the building work in a proper and workmanlike manner in relation to the whole of the building work, by order in writing served on the person who carried out the building work order him to —

- (a) remedy the building work that has not been carried out in a proper and workmanlike manner within such reasonable time as is specified in the order; or
- (b) pay to the person for whom the building work was carried out —
 - (i) such costs of remedying the building work that has not been carried out in a proper and workmanlike manner as the Disputes Committee considers is reasonable; or
 - (ii) such sum of money as the Disputes Committee considers reasonable to compensate him for the failure to carry out the building work in a proper and workmanlike manner,

and any costs or sum of money so ordered to be paid constitutes a debt due to the person to whom it is so ordered to be paid and is recoverable by him in a court of competent jurisdiction.

(1a) The Disputes Committee shall not have power to make an order under this section in respect of any building work following a complaint in respect of that work, unless such complaint is made before the expiration of 6 years from the time when the building work was completed; and for the purposes of this subsection, building work is completed when the building to which the work relates becomes fit for occupation in a free and uninterrupted manner.

(1b) The provisions of subsections (1) and (1a) apply to and in relation to building work carried out by any person, whether a builder or not, and whether registered under this Act or not.

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(1c) Nothing in section 4 (1) (A) precludes a person who is not registered as a builder under this Act from carrying out an order of the Disputes Committee made pursuant to paragraph (a) of subsection (1) or (1a) of this section.

[(2) and (3) repealed]

(4) A person shall not, without reasonable excuse, fail to comply with an order of the Disputes Committee under this section.

Penalty: \$10 000.

(4a) If the Disputes Committee is satisfied that an order to remedy building work —

- (a) made by the Disputes Committee under subsection (1) (a) or (1a) (a);

[(b) deleted]

has not been complied with, or has been complied with in part only, by the person on whom it was served, whether or not he has on that account been convicted of an offence under subsection (4), the Disputes Committee may —

- (c) revoke the order in relation to that building work or the part in question; and
- (d) make an order under subsection (1) (b) or (1a) (b), as the case may be, in relation thereto.

(4b) This section shall apply to, and in relation to, an order referred to in subsection (4a) (d) as if it were an order made by the Disputes Committee in the first instance.

(4c) The revocation of an order under subsection (4a) (c) shall not affect anything done under the order, or a punishment imposed under subsection (4), before the revocation.

(5) The making of an order by the Disputes Committee under this section in respect of any building work carried out by a builder does not, irrespective of whether an appeal is made against the making of the order or of the manner in which the appeal is disposed of, limit or affect in any way the power of the Board to deal with that or any other builder under section 13 in connection with the performance, carrying out or completion of the building work which the order required to be remedied.

(6) Nothing in this section has the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had had this section not been enacted but in hearing and determining any matter in which a builder or other person against whom or which an order has been made under this section and a person for whom building work has been carried out are parties a court may have regard to any order made by the Disputes Committee under this section.

[Section 12A³ inserted by No. 58 of 1970 s.2; amended by No. 97 of 1975 s.11; No. 39 of 1983 s.12; No. 14 of 1984 s.6; No. 93 of 1990 s.11; No. 60 of 1991 s.13.]

[12AA. Repealed by No. 60 of 1991 s.14.]

**Registrar may be requested to cause
an inspection of building work**

12B. A builder who has performed building work or a person for whom building work has been carried out may request the Registrar to cause an inspection to be made of the building work and the Registrar may, if he thinks fit, give effect to the request.

[Section 12B inserted by No. 60 of 1991 s.14.]

[12C. Repealed by No. 60 of 1991 s.14.]

s. 13

Cancellation of registration for fraud or on other grounds

13.⁵ (1) The Board may cancel or suspend registration of any builder under this Act —

- (a) where such registration has been obtained by fraud or misrepresentation; or
- (aa) when after such registration such builder has been convicted of an offence under the *Home Building Contracts Act 1991*; or
- (b) when after such registration such builder has been convicted of any crime or misdemeanour or of any offence which, if committed in Western Australia, would be a crime or misdemeanour; or
- (ba) where the builder does not have sufficient material and financial resources available to enable the builder to meet his or its financial obligations as and when they become due; or
- (c) who has been guilty of any negligence or incompetence in connection with the performance of any building work or who has been convicted of any offence against this Act or any regulation; or
- (ca) where the builder is a partnership, company or other body corporate, the building work carried out has not been managed and supervised by the partnership, company or other body corporate in compliance with section 10B or 10C, as the case may be; or
- (cb) who has made any statement or representation with respect to the provision of finance or the terms or charges therefor that is to his knowledge false in a material particular, for the purpose of inducing a person to enter into a contract for the carrying out or completion of any building work or for the purpose of inducing a person to purchase any land on which building work has been carried out by the builder; or

- (d) who has been guilty of any fraudulent conduct in regard to the carrying out or completion of any building work; or
- (e) who, being a journeyman builder under this Act, does not comply with the conditions of his registration; or
- (ea) who being a builder registered under section 10 (1) (b) (iv) (III), does not comply with any condition attached to his registration; or
- (f) where the builder is a partnership or a company or other body corporate and the registration of the partner or the director of the company or the member of the board of management of the body corporate (as the case may be) who is the registered builder, or of the registered builder who is employed by the partnership or the company or the body corporate to manage and supervise the building work undertaken by it, is cancelled or suspended under this Act;

and upon the making of the order of cancellation, or (as the case may be) during the period specified in the order of suspension, such builder shall cease to be registered under this Act.

(1a) Where the registration under this Act of a partnership, company or body corporate has been cancelled or suspended by the Board after the holding of an inquiry into a matter or matters arising under subsection (1) (c) or (d), the Board may, if in all the circumstances of the case it considers it proper so to do, without further inquiry, by order cancel or suspend the registration under this Act of the partner, director, member of the board of management or employee by whom the building work to which the inquiry related was, or was required by this Act to be, managed and supervised.

(1b) Upon the making of an order of cancellation under subsection (1a), the person named in the order shall cease to be registered under this Act and upon the making of an order of suspension under that subsection, the person named in the order shall cease to be registered under this Act for the period specified in the order.

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(1c) The Board shall not cancel or suspend the registration of a person under subsection (1a) unless —

- (a) it has sent to the partner, director, member of the board of management or employee a copy of the notice sent under subsection (3) to the partnership, company or body corporate; and
- (b) it has afforded him an opportunity of giving an explanation personally at the inquiry or in writing.

(2) By order of the Board the cancellation or suspension of the registration of any builder may at any time, and for such reason and upon such terms as the Board thinks fit, be annulled. A builder whose registration has been suspended or cancelled may at any time after the expiration of 3 months from the date of such cancellation apply to the Board to annul such cancellation.

(3) Before cancelling or suspending the registration of any builder under subsection (1), the Board shall —

- (a) send to such builder by post or registered letter, notice in writing of the complaint against the builder; and
- (b) hold full inquiry into the matter and afford such builder an opportunity of giving an explanation personally or in writing.

[Section 13 amended by No. 44 of 1953 s.11; No. 54 of 1961 s.13; No. 41 of 1968 s.10; No. 97 of 1975 s.14; No. 14 of 1984 s.7; No. 8 of 1986 s.10; No. 93 of 1990 s.12; No. 60 of 1991 s.15.]

Appeal from decision or order of Board

14. (1) A person who is dissatisfied with a decision of the Board refusing, cancelling, or suspending his registration, or refusing to register him or to annul the cancellation or

suspension of his registration, may appeal to the District Court against the decision in the manner and in the time prescribed by rules made by the District Court.

(2) The decision of the District Court on the appeal is final.

(3) Where the District Court varies a decision of the Board or substitutes a decision for that of the Board, the decision of the District Court has effect for the purposes of this Act as if it were a decision of the Board.

[Section 14 inserted by No. 60 of 1991 s.16.⁶]

**Fraudulently obtaining certificate, etc.,
falsifying register, etc.**

15.⁵ Any person —

- (a) who procures or attempts to procure registration or a certificate under this Act by making or producing or causing to be made or produced any false and fraudulent declaration, certificate, or representation, either in writing or otherwise; or
- (b) who wilfully makes or causes to be made any falsification in or in any manner relating to the register,

commits an offence and is liable to a penalty of \$10 000.

[Section 15 amended by No. 29 of 1966 s.10; No. 93 of 1990 s.13.]

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Penalty for disobedience of order of Board or breach of regulations

16.⁵ Save as otherwise expressly provided, any registered builder or journeyman builder who —

- (a) fails, neglects, or refuses to comply with any lawful direction of the Board made pursuant to this Act or any regulation; or
- (b) is guilty of a contravention of any regulation; or
- (c) does not comply with the conditions of his registration,

commits an offence and is liable to a penalty of \$2 000.

[Section 16 amended by No. 44 of 1953 s.12; No. 54 of 1961 s.15; No. 29 of 1966 s.11; No. 93 of 1990 s.14.]

Powers conferred on Board in conducting investigation

17.⁵ (1) For the purpose of conducting any investigations or inquiry authorized to be made under this Act, the Board shall have power to compel the attendance of witnesses, and may administer oaths and affirmations.

(2) Without limiting the generality of subsection (1) the Board may for the purposes of any such investigation or inquiry take a statutory declaration from any witness or other person.

Local authorities to furnish information to the Board

18.⁵ (1) It shall be lawful for any member of the Board, or for any officer of the Board authorized in that behalf by writing under the hand of the chairperson of the Board, to enter the premises of any local authority at any time when such premises are open for business, and to examine and make copies of or

extracts from all books, papers, records, documents, and other entries of the local authority relating to applications for and the issue of building licences by the local authority for the purpose of obtaining any information which the Board requires.

(2) If any member or officer or servant of a local authority hinders or obstructs or attempts to hinder or obstruct any member or officer of the Board in the lawful exercise by him of the powers conferred by subsection (1), he shall be guilty of an offence.

Penalty: \$1 000.

[Section 18 inserted by No. 43 of 1940 s.5 as s.16A; amended by No. 29 of 1966 s.12; No. 41 of 1968 s.11; No. 93 of 1990 s.15; No. 60 of 1991 s.7.]

Return of certificates

19.⁵ (1) Any builder whose registration has been cancelled or suspended shall within 14 days from the notification to such builder of such cancellation or suspension surrender to the Board every certificate issued to such builder under this Act.

(2) On failure to do so, such builder shall be liable to a penalty of not more than \$50.

(3) The cancellation or suspension of the registration of any builder shall be effectual, notwithstanding such failure to surrender any certificate.

[Section 19 amended by No. 24 of 1948 s.6; No. 54 of 1961 s.16; No. 29 of 1966 s.13.]

Signature of chairperson

20.⁵ In any legal proceedings, any signature, which purports to be the signature of any person who is or has been chairperson or member of the Board or registrar shall, if such signature is

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attached to any certificate of registration or any document under this Act, and in the absence of proof to the contrary, be deemed to be the signature of such person.

[Section 20 amended by No. 29 of 1966 s.14; No. 60 of 1991 s.7.]

Right of entry and inspection

20A. (1) Any member of the Board, or person authorized in writing in that behalf by the chairperson of the Board, may at any time enter upon any land on which any building work is being carried out and inspect the building work.

(2) A person who in any way resists, obstructs, impedes or delays a member of the Board or other person authorized under subsection (1), in the exercise of his powers conferred by that subsection commits an offence.

[Section 20A inserted by No. 58 of 1970 s.3; amended by No. 60 of 1991 s.7.]

Proceedings under this Act

21.⁵ (1) Any proceedings under this Act may be taken by the registrar or by any other person authorized by the Board, either generally or in any particular case; and in any such proceedings no proof shall, until evidence is given to the contrary, be required of any such authority having been given by the Board.

(2) In any legal proceedings, civil or criminal, instituted by or under the direction of or against the Board, a certificate purporting to be signed by the chairperson of the Board and stating that —

- (a) the persons named in that certificate constituted the Board on the date specified in that certificate;

- (b) a resolution, order or act set out or described in that certificate was passed, made or done by the Board on the date specified in that certificate;
- (c) the registrar or a clerk or other employee of the Board was appointed specially or generally by the Board on the date specified in that certificate to represent or to prosecute on behalf of the Board in those proceedings;
- (d) the registrar or a clerk or other employee of the Board was authorized to prosecute in those proceedings;
- (e) any member of the Board or the registrar or a clerk or other employee of the Board was duly nominated or appointed as such on the date specified in that certificate; or
- (f) a quorum of the Board was present at the passing of any resolution, making of any order or doing of any act by the Board,

shall be *prima facie* evidence of the facts so stated on its mere production by any person in those proceedings.

[Section 21 amended by No. 91 of 1979 s.10; No. 60 of 1991 s.7.]

Limitation of proceedings

21A. Where an offence is committed under this Act complaints may be made within 12 months from the time that the offence was committed.

[Section 21A inserted by No. 44 of 1953 s.13.]

Fees and expenses

22.⁵ (1) There shall be paid to the Board by every candidate for examination or applicant for registration, or for any certificate, such fees as the Board, with the approval of the Governor, prescribes.

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[(2) *repealed*]

(3) There shall also be paid to the Board on or before 1 February in each year by every registered builder or journeyman builder such fee as the Minister determines; and if any such builder in any year makes default in paying such fee, the registration of such builder may be suspended, but if the builder gives a satisfactory explanation of such default, the suspension of such registration shall be annulled on payment of such annual fee, together with such additional fee (if any), not exceeding \$1, as the Board directs.

(4) All fees (including fees paid to the Disputes Committee) and penalties paid or recovered under this Act shall be paid to the Board.

(5) The Board shall apply such fees and penalties to —

- (a) the payment of expenses connected with or incidental to the examination of candidates and to the general expenses (including the payment of fees to members of the Board for attendance at meetings) of the Board in carrying this Act into execution;
- (b) the provision of scholarships for the technical training of persons employed or to be employed in the building trade, or any trade incidental thereto; and
- (c) with the approval of the Minister, the provision of any training scheme for persons referred to in paragraph (b).

[Section 22 amended by No. 44 of 1953 s.14; No. 61 of 1959 s.9; No. 54 of 1961 s.17; No. 29 of 1966 s.15; No. 97 of 1975 s.15; No. 39 of 1983 s.15; No. 60 of 1991 s.17.]

Accounts

23. (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.

(2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

[Section 23 inserted by No. 77 of 1987 s.3.]

Audit

23A. (1) The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

(2) An auditor appointed under subsection (1) shall be a person who is registered as an auditor, or taken to be so registered, under Part 9.2 of the Corporations Law.

[Section 23A inserted by No. 60 of 1991 s.18.]

Annual report

23B. (1) The Board shall on or before 31 March in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 31 December together with a copy of the financial statements and the auditor's report.

(2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

[Section 23B inserted by No. 77 of 1987 s.3.]

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Directions by Minister

23C. (1) Subject to subsection (2) the Minister may, after consulting with the Board, give directions in writing to the Board with respect to the performance of its functions either generally or in relation to a particular matter, and the Board shall give effect to any such direction.

(2) The Minister shall not under subsection (1) direct the Board with respect to the performance of its functions in respect of —

- (a) a particular person; or
- (b) a particular application, complaint or proceeding.

(3) The text of any direction given under subsection (1) shall be included in the annual report submitted by the Board under section 23B.

[Section 23C inserted by No. 60 of 1991 s.19.]

Minister to have access to information

23D. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —

- (a) to have information in the possession of the Board; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Board to furnish information to the Minister;

- (b) request the Board to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.

(3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Board;

“parliamentary purposes” means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 23D inserted by No. 60 of 1991 s.19.]

Power to make regulations

24.⁵ (1) The Board, with the approval of the Governor, may make regulations for or with respect to —

[(a) deleted]

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- (b) regulating the conduct of the business of the Board;
- (c) the register or registration therein and the issue and cancellation of certificates of registration;
- (d) the method of admission to the register of persons who at the commencement of this Act are *bona fide* carrying on the business of a builder;
- (e) the fees payable under this Act;
- (ea) requiring local authorities to give notice in the prescribed manner of the issue of building licences;
- (f) the particulars required to be given in any notice under this Act;
- (g) any forms to be used under this Act, and any such form or forms to the like effect shall be sufficient in law;
- (h) any matters authorized by this Act to be prescribed;
- (i) granting a temporary licence to any approved inter-State builder upon his satisfying the Board of his possessing the requisite qualifications; and
- (j) generally any matters or things necessary or convenient to be prescribed for the due and proper carrying out of the provisions of this Act.

(2) Any such regulations may without prejudice to any other method of revocation be revoked by order of the Governor in Council.

[Section 24 amended by No. 54 of 1961 s.18; No. 41 of 1968 s.12; No. 39 of 1983 s.16.]

Interpretation

25. In this section and in sections 26 to 46, unless the contrary intention appears —

“chairperson” means the holder of the office of the chairperson of the Disputes Committee;

“deputy chairperson” means the holder of an office of deputy chairperson of the Disputes Committee.

[Section 25 inserted by No. 60 of 1991 s.20.]

Building Disputes Committee

26. (1) There shall be a tribunal to be known as the Building Disputes Committee.

(2) The Disputes Committee shall have a seal of which all courts and persons acting judicially shall take judicial notice.

[Section 26 inserted by no. 60 of 1991 s.20.]

Chairperson and deputies

27. (1) The chairperson of the Board by virtue of holding that office, also holds office as the chairperson of the Disputes Committee.

(2) The Minister may, in writing, appoint a person or persons, each of whom is a practitioner as defined by the *Legal Practitioners Act 1893*, to hold office as deputy chairperson or deputy chairpersons of the Disputes Committee.

[Section 27 inserted by No. 60 of 1991 s.20.]

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Panels

28. (1) The Minister shall establish —

- (a) a panel of persons representative of the interests of consumers; and
- (b) a panel of persons representative of the interests of builders.

(2) A panel established under subsection (1) shall comprise such number of persons appointed in writing by the Minister as the Minister from time to time thinks fit.

(3) When it is necessary to appoint persons to the panel referred to in subsection (1) (b), the Minister shall request each of the Master Builders' Association of Western Australia and the Housing Industry Association Western Australian Division to nominate, within such time as is specified, a specified number of the Association's members as candidates for appointment and shall appoint to the panel from those candidates an equal number of persons from each of the Associations.

[Section 28 inserted by No. 60 of 1991 s.20.]

Term of office

29. (1) Subject to this section, a person appointed to be a deputy chairperson, or to be a member of a panel established under section 28, shall hold office for such term not exceeding 3 years as is specified in the person's instrument of appointment and, upon the expiration of that term, is eligible for reappointment.

(2) The Minister may remove from office a person appointed to an office referred to in subsection (1) on the grounds of —

- (a) mental or physical incapacity to carry out satisfactorily the duties of the person's office;

- (b) neglect of duty; or
- (c) misconduct.

(3) A person appointed to an office referred to in subsection (1) may at any time resign from the office by notice in writing delivered to the Minister.

[Section 29 inserted by No. 60 of 1991 s.20.]

Fees and allowances

30. (1) Subject to subsection (2), a deputy chairperson and the members of a panel established under section 28 shall be paid, out of the funds of the Board, such remuneration and travelling and other allowances as are determined in each person's case by the Minister on the recommendation of the Public Service Commissioner.

(2) Subsection (1) does not apply to an officer employed in the Public Service.

[Section 30 inserted by No. 60 of 1991 s.20.]

Conditions of appointment

31. The appointment of a person as a deputy chairperson or as a member of a panel established under section 28 shall, subject to this Act, be in accordance with such terms and conditions as may be specified in the instrument appointing the person.

[Section 31 inserted by No. 60 of 1991 s.20.]

Powers not affected by vacancy

32. Without limiting the application of section 57 of the *Interpretation Act 1984*, the powers of the Disputes Committee are not affected by a vacancy in the membership of a panel

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established under section 28 nor shall the powers of a deputy chairperson be affected by the vacancy in the office of the chairperson.

[Section 32 inserted by No. 60 of 1991 s.20.]

Registrar

33. (1) The registrar of the Board is the registrar and executive officer of the Disputes Committee.

(2) The registrar may, with the written approval of the Disputes Committee or the chairperson, exercise such of the jurisdiction of the Disputes Committee as is prescribed in regulations and for that purpose has all of the powers of the Disputes Committee necessary to do so.

(3) Where in the exercise of jurisdiction conferred by subsection (2), the registrar makes a decision or an order, a party to the proceedings who is dissatisfied with the decision or order may request the Disputes Committee to review the decision or order and the Disputes Committee on receiving such a request, shall review the decision or order and confirm, vary, or quash the decision or order.

(4) The Disputes Committee may, on its own motion, review any decision or order made by the registrar, including a decision or order made in the exercise of jurisdiction conferred by subsection (2), and may confirm, vary, or quash the decision or order.

(5) Nothing in this section prejudices any right of appeal that a person may have, but where the right of appeal is exercisable in respect of a decision or order made by the registrar in the exercise of jurisdiction conferred by subsection (2), it shall not be exercised until the right under subsection (3) to request a review of the decision or order has been exhausted.

[Section 33 inserted by No. 60 of 1991 s.20.]

Expenses of Disputes Committee

34. The expenditure necessary for the functioning of the Disputes Committee shall be met by the Board.

[Section 34 inserted by No. 60 of 1991 s.20.]

Jurisdiction and constitution of Disputes Committee

35. (1) Subject to this section, the jurisdiction to be exercised by the Disputes Committee is that conferred on it by section 12A and by the *Home Building Contracts Act 1991*.

(2) When exercising its jurisdiction the Disputes Committee shall be constituted by —

- (a) the chairperson or a deputy chairperson;
- (b) one person selected by the person mentioned in paragraph (a) from the panel referred to in section 28 (1) (a); and
- (c) one person selected by the person mentioned in paragraph (a) from the panel referred to in section 28 (1) (b).

(3) The selection under subsection (2) of a person from a panel shall be evidenced in writing.

(4) The Disputes Committee constituted in accordance with this section may sit and exercise the jurisdiction of the Disputes Committee notwithstanding that the Disputes Committee differently constituted in accordance with this section is at the same time sitting and exercising the jurisdiction of the Disputes Committee.

[Section 35 inserted by No. 60 of 1991 s.20.]

Sittings of Disputes Committee

36. (1) At all its sittings the Disputes Committee shall act according to equity, good conscience, and the substantial merits of the case and without regard to technicalities and legal forms, and shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) At all sittings of the Disputes Committee the person referred to in section 35 (2) (a) shall preside and determine any question relating to the admissibility of evidence and any other question of law or procedure.

(3) Subject to subsection (2), the decision of a majority of members of the Disputes Committee shall be the decision of the Disputes Committee.

(4) The Disputes Committee shall cause a record to be kept of proceedings before it.

(5) To the extent that it is not prescribed by this Act or the regulations, the Disputes Committee shall determine its own procedure.

[Section 36 inserted by No. 60 of 1991 s.20.]

Hearings

37. (1) The Disputes Committee shall cause to be given to a person who is a party to proceedings before the Disputes Committee reasonable notice of the time when and place where it intends to conduct those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Disputes Committee.

(2) If a person to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Disputes Committee may conduct proceedings in the absence of the person.

(3) The Commissioner for Consumer Affairs referred to in section 15 of the *Consumer Affairs Act 1971* may appear personally in proceedings before the Disputes Committee or may be represented in those proceedings by counsel or an officer employed in the Public Service.

[Section 37 inserted by No. 60 of 1991 s.20.]

Powers of Disputes Committee

- 38.** (1) The Disputes Committee may —
- (a) by summons signed on behalf of the Disputes Committee by the registrar, require —
 - (i) the attendance before the Disputes Committee of any person;
 - (ii) the production before the Disputes Committee of any document;
 - (b) inspect any document produced before it, and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents;
 - (c) require any person to swear to truly answer all questions relating to a matter being enquired into by the Disputes Committee that are put by or before the Disputes Committee (and for that purpose a member of the Disputes Committee may administer an oath or affirmation); and
 - (d) require any person to answer any relevant question put by a member of the Disputes Committee or by any other person appearing before the Disputes Committee.

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(2) In the course of any proceedings the Disputes Committee may —

- (a) receive in evidence any transcript of evidence in proceedings before a court or a person or body acting judicially and draw any conclusion of fact therefrom as it thinks fit; and
- (b) adopt, as in its discretion it thinks fit, any finding, decision, or judgment of a court or person or body acting judicially that is relevant to the proceedings before the Disputes Committee.

(3) The Disputes Committee may make such orders for costs as it thinks fit.

[Section 38 inserted by No. 60 of 1991 s.20.]

Offences

39. A person who —

- (a) having been served with a summons to attend the Disputes Committee, fails without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons;
- (b) having been served with a summons to produce before the Disputes Committee any document, fails without reasonable excuse (proof of which lies upon the person) to comply with the summons;
- (c) misbehaves before the Disputes Committee, wilfully insults the Disputes Committee or a member thereof, or interrupts the proceedings of the Disputes Committee; or

- (d) fails without reasonable excuse (proof of which lies upon the person) to be sworn, or to answer any question, when required to do so by the Disputes Committee,

commits an offence.

Penalty: \$2 000.

[Section 39 inserted by No. 60 of 1991 s.20.]

Reasons for decision

40. (1) Where a party to proceedings before the Disputes Committee has, within 14 days after the Disputes Committee has made a decision or order in those proceedings, requested the Disputes Committee to give reasons in writing for the decision or order, the Disputes Committee shall give that party reasons in writing for the decision or order.

(2) The Disputes Committee shall ensure that the parties are made aware of their right to request reasons for decision or order. Where a party requests an extension of time the Disputes Committee shall extend the period of time for requesting those reasons unless satisfied that the person was fully aware of the right and neglected to exercise it.

[Section 40 inserted by No. 60 of 1991 s.20.]

Appeal

41. (1) Subject to subsection (2), a party to proceedings before the Disputes Committee may appeal to the District Court against a decision of the Disputes Committee in the manner and in the time prescribed by rules made by the District Court.

(2) An appeal does not lie under subsection (1) unless the Disputes Committee or the District Court gives leave to appeal.

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(3) Without limiting the rules of court, where an appeal under this section has been commenced, or application has been made for leave to appeal, against a decision of the Disputes Committee, the District Court —

(a) may suspend the operation or effect of the decision until the appeal is determined or the application for leave to appeal is withdrawn or dismissed; and

(b) may revoke any such suspension.

(4) A decision of the District Court under this section is final.

(5) Where the District Court varies a decision of the Disputes Committee or substitutes a decision for that of the Disputes Committee, the decision of the District Court has effect for the purposes of this Act or the *Home Building Contracts Act 1991* as if it were a decision of the Disputes Committee.

[Section 41 inserted by No. 60 of 1991 s.20.]

Case stated

42. (1) Where a question of law arises in proceedings before the Disputes Committee, the Disputes Committee may of its own motion state a case for the decision of the District Court on the question notwithstanding that the Disputes Committee has made a decision in the proceedings.

(2) Where the Disputes Committee has stated a case for the decision of the District Court, the Disputes Committee may indemnify any of the parties against the costs or part of the costs of any proceedings resulting from a case being stated and any moneys payable to a party by reason of that indemnity, when certified by the registrar as payable, shall be paid by the Board.

(3) The District Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of it.

[Section 42 inserted by No. 60 of 1991 s.20.]

Evidentiary provisions

43. In all courts and before all persons and bodies authorized to receive evidence —

- (a) a document purporting to be a copy of a decision or order of the Disputes Committee and purporting to be certified by the registrar to be such a copy shall be admitted as a true copy of a decision or order of the Disputes Committee; and
- (b) judicial notice shall be taken of the signature of the registrar on a document referred to in paragraph (a).

[Section 43 inserted by No. 60 of 1991 s.20.]

Enforcement of payment of pecuniary sums

44. (1) Where an order of the Disputes Committee requires the payment of a pecuniary sum, the registrar shall, upon the application of a party to the proceedings in which the order was made, or a person claiming through or under such a party, issue a certified copy of the order.

(2) Where a certified copy of an order of the Disputes Committee is lodged with the clerk of a Local Court in accordance with the rules of court (which may include provision for the payment of a lodging fee), the clerk shall register the order and payment of the pecuniary sum thereunder may be enforced as if it were required by an order of that court.

[Section 44 inserted by No. 60 of 1991 s.20.]

s. 45

Immunity

45. No liability attaches to the Disputes Committee or a member of the Disputes Committee or to the registrar for any act or omission of the Disputes Committee, member or registrar that occurs in good faith and in the performance, or the purported performance, of the functions under this or any other written law of the Disputes Committee, member or registrar.

[Section 45 inserted by No. 60 of 1991 s.20.]

Regulations

46. (1) The Governor may make regulations prescribing all matters that are required or permitted by sections 25 to 45 to be prescribed, or are necessary or convenient to be so prescribed, for enabling the Disputes Committee to exercise the jurisdiction conferred on it or otherwise for giving effect to those sections.

(2) The regulations may —

- (a) provide for the constitution of the panels established under section 28 and require consultation with persons in relation to the membership of such panels;
- (b) prescribe matters relating to the practice and procedure of the Disputes Committee;
- (c) provide for the enforcement of decisions and orders of the Disputes Committee (other than for the payment of pecuniary sums);
- (d) assign functions to the registrar and regulate the manner in which they are to be carried out;
- (e) make provision as to fees.

[Section 46 inserted by No. 60 of 1991 s.20.]

SCHEDULE

[s.3]

AREAS WITHIN WHICH THIS ACT APPLIES

1. *The Metropolitan area.*

That is to say, all that portion of the State which lies within the area bounded by a line starting from the south-western corner of Swan Location 2745 (South Latitude 31 degrees 27 minutes 23.105 seconds, East Longitude 115 degrees 33 minutes 35.604 seconds), being a point on the northernmost northern boundary of the district of the Shire of Wanneroo, and extending easterly, generally southerly, again easterly, again generally southerly and again easterly along the boundaries of that district to the intersection of the prolongation northerly of the eastern boundary of Location 1584 with the prolongation westerly of the northern boundary of Location 2478, being a north-western corner of the district of the Shire of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost south-eastern corner of Location 1817, being a point on the northernmost northern boundary of the district of the Shire of Mundaring; thence easterly, generally southerly, again easterly, again generally southerly, generally westerly, again southerly, again easterly, again southerly and again westerly and generally north-westerly along boundaries of the district of the Shire of Mundaring to the intersection of the left bank of the Darkan River with the prolongation northerly of the western boundary of late Pre-emptive Poison Right 8/228, being the easternmost north-eastern corner of the district of the Shire of Kalamunda; thence southerly along the easternmost eastern boundary of the district of the Shire of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a north-eastern corner of the district of the Town of Armadale; thence generally southerly, generally south-easterly, westerly and south-westerly along the boundaries of the district of the Town of Armadale to the 33 Mile Post on the north-eastern side of Albany Highway, being a north-eastern corner of the district of the Shire of Serpentine-Jarrahdale; thence generally south-easterly, southerly, generally westerly and northerly along boundaries of the district of the Shire of Serpentine-Jarrahdale to the north-eastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Diagram 2909, being a south-eastern corner of the district of the Shire of Rockingham; thence generally westerly along the boundaries of the district of the Shire of Rockingham to the south-western corner of Lot 236 as shown on Land Titles Office

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Plan 7931 (2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds); thence west 17 820.4 metres to East Longitude 115 degrees 33 minutes 30 seconds; thence north 110 932.1 metres to South Latitude 31 degrees 27 minutes 23.105 seconds and thence east 148 metres to the starting point.

2. The Shire of Mandurah.

That is to say, all that portion of the State which lies within the area bounded by a line starting at the intersection of the low water mark of the Indian Ocean with the prolongation westerly of the northern boundary of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Plan 3064 and extending easterly to and along that boundary and onwards to the north-western corner of Lot 1, as shown on Land Titles Office Plan 12382; thence easterly along the northern boundary of that lot and onwards to an eastern side of Stock Road; thence generally southerly, generally south-easterly, generally south-westerly, south-easterly, southerly and again south-easterly along sides of that road to a north-eastern side of Lakes Road; thence south-easterly that side to the right bank of the Serpentine River; thence generally south-westerly downwards along that bank to the northernmost northern boundary of Location 2459; thence westerly and south-westerly along boundaries of that location and south-westerly along the north-western boundary of Lot 217 of Location 16, as shown on Land Titles Office Plan 2087 Sheet 1 and onwards to a south-western side of Hougham Road; thence south-easterly along that side to the right bank of the Serpentine River; thence generally southerly, generally westerly, generally south-westerly, generally south-easterly and again generally south-westerly downwards along that bank to the low water mark of Peel Inlet; thence generally north-westerly along that mark to the prolongation southerly of the western side of Kurdal Road; thence south-westerly to the low water mark at the eastern extremity of Creery Island; thence generally south-westerly along that mark to the southern extremity of Creery Island; thence west to the low water mark of Peel Inlet; thence generally south-westerly along that mark and generally south-easterly and generally northerly along the low water mark of Harvey Estuary to the left bank of the Harvey River; thence generally southerly upwards along that bank to a point situate east of the easternmost north-eastern corner of Murray Location 1209; thence west to and generally south-westerly, generally north-westerly and westerly along boundaries of the last mentioned location to the north-eastern corner of the north-eastern severance of Location 793; thence westerly along the

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northern boundary of that severance and onwards to and along the northernmost northern boundary of the central severance of that location and onwards to the north-eastern corner of the western severance of the last mentioned location; thence westerly along the northern boundary of that severance and westerly and south-easterly along boundaries of Location 1591 to a north-western corner of the western severance of Location 793; thence south-easterly, south-westerly and generally south-easterly along boundaries of that severance to the north-western corner of Wellington Location 535; thence south-easterly along the south-western boundary of that location to its south-western corner; thence westerly along the prolongation westerly of the southern boundary of the last mentioned location to an eastern boundary of the eastern severance of Location 4981; thence generally south-easterly, generally south-westerly and westerly along boundaries of that severance and onwards to the south-eastern corner of the south-western severance of the last mentioned location; thence westerly along the southern boundary of that severance and westerly, northerly and again westerly along boundaries of Location 3045 and onwards to the low water mark of the Indian Ocean and thence generally northerly, generally north-easterly, generally easterly crossing the entrance to Peel Inlet and generally southerly along that mark to the starting point.

3. The districts of the City of Bunbury, and of the Shires of Busselton, Collie, Dardanup, Harvey and Murray as constituted under the *Local Government Act 1960* as at the commencement of the *Builders' Registration Amendment Act 1986*¹.

4. The districts of the City of Geraldton and of the Shires of Greenough, Chapman Valley and Northampton as constituted from time to time under the *Local Government Act 1960*.

5. In addition to the areas set out in items 1 to 4, all the remaining area in the South-West Division of Western Australia, as that Division is defined for the purposes of the *Land Act 1933*, in section 28 of that Act.

[Schedule inserted by No. 39 of 1983 s.17; amended by No. 8 of 1986 s.11⁷; No. 93 of 1990 s.16⁸; and amended in Gazette 5 January 1993 p.1.]

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NOTES

¹ This reprint is a compilation as at 3 May 1993 of the *Builders' Registration Act 1939* and includes all amendments effected by the other Acts referred to in Part 1 of the following Table and by the regulations referred to in Part 2 of the following Table⁹.

Table of Acts and Regulations

PART 1 — ACTS

| Act | Number and Year | Assent | Commencement | Miscellaneous |
|--|-----------------|------------------|---|---------------|
| <i>Builders' Registration Act 1939</i> | 29 of 1939 | 16 December 1939 | 1 May 1940 (see <i>Gazette</i> 26 April 1940 p.597) | |
| <i>Builders' Registration Act Amendment Act 1940</i> | 43 of 1940 | 30 December 1940 | 30 December 1940 | |
| <i>Builders' Registration Act Amendment Act 1944</i> | 15 of 1944 | 8 December 1944 | 8 December 1944 | |
| <i>Builders' Registration Act Amendment Act 1945</i> | 14 of 1945 | 9 January 1946 | 9 January 1946 | |
| <i>Builders' Registration Act Amendment Act 1948</i> | 24 of 1948 | 9 December 1948 | 9 December 1948 | |
| <i>Builders' Registration Act Amendment Act 1953</i> | 44 of 1953 | 29 December 1953 | 29 December 1953 | |

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Table of Acts and Regulations — *continued*

PART 1 — Acts — *continued*

| Act | Number and Year | Assent | Commencement | Miscellaneous |
|--|-----------------|------------------|--|---------------|
| <i>Builders' Registration Act Amendment Act 1956</i> | 63 of 1956 | 4 January 1957 | 4 January 1957 | |
| <i>Builders' Registration Act Amendment Act 1959</i> | 61 of 1959 | 10 December 1959 | 5 February 1960 (see <i>Gazette</i> 5 February 1960 p.254) | |
| <i>Builders' Registration Act Amendment Act 1961</i> | 54 of 1961 | 23 November 1961 | 2 February 1962 (see <i>Gazette</i> 2 February 1962 p.324) | |
| <i>Builders' Registration Act Amendment Act 1965</i> | 33 of 1965 | 21 October 1965 | 21 October 1965 | |
| <i>Builders' Registration Act Amendment Act 1966</i> | 29 of 1966 | 27 October 1966 | 16 December 1966 (see <i>Gazette</i> 16 December 1966 p.3316) | |
| <i>Builders' Registration Act Amendment Act 1968</i> | 41 of 1968 | 8 November 1968 | 1 January 1969 (see <i>Gazette</i> 13 December 1968 p.3814) | |
| <i>Builders' Registration Act Amendment Act 1970</i> | 58 of 1970 | 5 November 1970 | 5 November 1970 | |
| <i>Builders' Registration Act Amendment Act 1975</i> | 97 of 1975 | 1 December 1975 | 24 December 1975 (see <i>Gazette</i> 24 December 1975 p.4637) | |

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Table of Acts and Regulations — *continued*

PART 1 — Acts — *continued*

| Act | Number and Year | Assent | Commencement | Miscellaneous |
|---|-----------------|------------------|--|--|
| <i>Builders' Registration Act Amendment Act (No. 3) 1979</i> | 91 of 1979 | 21 December 1979 | 18 January 1980 (see <i>Gazette</i> 11 January 1980 p.37) | |
| <i>Companies (Consequential Amendments) Act 1982, section 28</i> | 10 of 1982 | 14 May 1982 | 1 July 1982 (see section 2 (1)) | |
| <i>Builders' Registration Amendment Act 1983</i> | 39 of 1983 | 1 December 1983 | Section 10: 30 December 1983; Balance: 1 January 1984 (see <i>Gazette</i> 30 December 1983 p.5015) | Sections 5 (2) and (3), 12 (2), and 17 (2) transitional |
| <i>Builders' Registration Amendment Act 1984</i> | 14 of 1984 | 31 May 1984 | 1 December 1984 (see <i>Gazette</i> 30 November 1984 p.3945) | Section 9 transitional |
| <i>Builders' Registration Amendment Act 1986</i> | 8 of 1986 | 15 July 1986 | 1 September 1986 (see <i>Gazette</i> 29 August 1986 p.3162) | Section 11 (2) transitional ⁷ |
| <i>Acts Amendment (Financial Provisions of Regulatory Bodies) Act 1987, section 3</i> | 77 of 1987 | 26 November 1987 | 1 January 1988 (see section 2) | |

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Table of Acts and Regulations — *continued*

PART 1 — Acts — *continued*

| Act | Number and Year | Assent | Commencement | Miscellaneous |
|---|-----------------|------------------|---|--|
| <i>Guardianship and Administration Act 1990</i> , section 123 | 24 of 1990 | 7 September 1990 | 20 October 1992 (see <i>Gazette</i> 2 October 1992 p.4811) | |
| <i>Builders' Registration Amendment Act 1990</i> | 93 of 1990 | 17 December 1990 | 8 February 1991 (see <i>Gazette</i> 8 February 1991 p.576) | Section 16 (2) and (3) transitional ⁸ |
| <i>Builders' Registration Amendment Act 1991</i> , Part 2 | 60 of 1991 | 30 December 1991 | 4 April 1992 (see section 2 and <i>Gazette</i> 3 April 1992 p.1461) | Sections 6 (2) and 16 (2) transitional ^{3, 6} |

PART 2 — REGULATIONS

| Regulation | Gazettal | Commencement | Miscellaneous |
|--|------------------------|----------------|---------------|
| <i>Builders' Registration (Area of Application) Regulations 1980</i> | 21 March 1980 pp.986-9 | 1 April 1980 | |
| <i>Builders' Registration (Scheduled Areas) Regulations 1992</i> | 5 January 1993 p.1 | 5 January 1993 | |

² In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990*.

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3 Section 6 (2) of Act No. 60 of 1991 reads as follows —

“ (2) Notwithstanding subsection (1), section 12A of the principal Act does not apply to any home building work as defined in the *Home Building Contracts Act 1991* carried out before the coming into operation of this section outside the areas described in the Schedule to the principal Act. ”.

4 Amended under section 7 (5) (a) of the *Reprints Act 1984* to give effect to section 31 (1) (g) of the *Acts Amendment (Public Service) Act 1987*.

5 In this reprint the renumbering of sections effected in the 1943 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and retained in subsequent reprints has again been retained. References to the original numbering are contained in the 1943 reprint.

6 Section 16 (2) of Act No. 60 of 1991 reads as follows —

“ (2) The repeal of section 14 of the principal Act by subsection (1) does not affect any appeal commenced before the coming into operation of this Act and any such appeal may be continued and disposed of as if this section had not come into operation. ”.

7 Section 11 (1) of Act No. 8 of 1986 inserted item 3 in the Schedule of areas in which the Act applies, and section 11 (2) reads as follows —

“ (2) Notwithstanding the coming into operation of subsection (1) —

(a) any act or thing lawfully commenced, and not discontinued or abandoned, before that coming into operation in an area to which the principal Act did not apply before that coming into operation may be continued and completed as if subsection (1) had not come into operation; and

(b) the Board shall not have power to make an order under section 12A of the principal Act in respect of building work commenced before that coming into operation in an area to which the principal Act did not apply before that coming into operation. ”.

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⁸ Section 16 (1) of Act No. 93 of 1990 inserted item 4 in the Schedule of areas in which the Act applies, and section 16 (2) and (3) read as follows —

“ (2) Where at any time after the coming into operation of subsection (1) the principal Act commences to apply in an area by reason of the amendment effected by that subsection —

- (a) any act or thing lawfully begun in that area and not discontinued or abandoned before the principal Act commenced to apply in that area may be continued and completed as if the principal Act had not so commenced to apply; and
- (b) the Board shall not have power to make an order under section 12A of the principal Act in respect of building work begun in that area before the principal Act commenced to apply in that area.

(3) In subsection (2) (b) “**Board**” has the same meaning as it has in the principal Act. ”.

⁹ Marginal notes in the *Builders' Registration Act 1939* referring to legislation from which provisions were derived have been omitted from this reprint.

